

IN THE UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF TENNESSEE
 AT CHATTANOOGA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
-versus-	:	CR-1-18-79
	:	
MONTE BREWER,	:	
	:	
Defendant.	:	

Chattanooga, Tennessee
 October 21, 2019

BEFORE: THE HONORABLE HARRY S. MATTICE, JR.,
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

CHRISTOPHER D. POOLE,
 Assistant United States Attorney
 1110 Market Street, Suite 301
 Chattanooga, Tennessee 37402

FOR THE DEFENDANT:

MARTIN WAYNE LESTER, of
 Lester Law
 4513 Hixson Pike, Suite 104
 Chattanooga, Tennessee 37343

JUDGMENT PROCEEDINGS

UNITED STATES DISTRICT COURT

1 THE COURT: Clerk call the next case.

2 THE CLERK: United States of America versus Monte
3 Brewer. Case No. is 1-2018-Criminal Action-79, defendant
4 number two.

5 THE COURT: All right. Are you Monte Brewer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I see you have an attorney, Mr. Lester,
8 with you in court. Does he represent you?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Who represents the
11 government?

12 MR. POOLE: Chris Poole, Your Honor.

13 THE COURT: Mr. Brewer, are you aware we are here
14 for your sentencing today?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you had an opportunity to review
17 and discuss with your attorney, Mr. Lester, the contents of
18 the presentence investigation report that's been prepared by
19 the Court's probation office?

20 THE DEFENDANT: Yeah.

21 THE COURT: Okay. Mr. Lester, have you had adequate
22 opportunity to review and discuss with Mr. Brewer the contents
23 of the presentence investigation report?

24 MR. LESTER: Yes, sir.

25 THE COURT: All right. Based upon that review and

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1 your discussions with Mr. Brewer, Mr. Lester, does Mr. Brewer
2 have any outstanding objections to the presentence
3 investigation report as prepared?

4 MR. LESTER: No, sir.

5 THE COURT: Mr. Poole, does the government have any
6 objections?

7 MR. POOLE: No, sir.

8 THE COURT: Then in the absence of objections, I'm
9 going to order that the presentence investigation report be
10 made a part of the record in Mr. Brewer's case. I further
11 find that the presentence investigation report accurately
12 reflects the facts stated therein and correctly calculates the
13 advisory guidelines applicable to Mr. Brewer's case.

14 The report reflects a total offense level of 21, a
15 criminal history category of five, which results in an
16 advisory guideline range of from 70 to 87 months.

17 Do you agree with that, Mr. Lester?

18 MR. LESTER: I do, Your Honor.

19 THE COURT: Do you agree, Mr. Poole?

20 MR. POOLE: Yes, sir.

21 THE COURT: All right. Counsel, am I correct that
22 there are no outstanding motions in the case? I know that Mr.
23 Lester has filed a sentencing memorandum, but there are no
24 outstanding motions. Is that accurate?

25 MR. POOLE: That's accurate.

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1 MR. LESTER: That's accurate, Your Honor.

2 THE COURT: Then I need to turn my attention to the
3 matter of the plea agreement. And, of course, my decision on
4 that depends upon whether I believe that the disposition of
5 the case as agreed to by the parties pursuant to Rule
6 11(c)(1)(C) of the Federal Rules of Criminal Procedure comport
7 with the factors to be considered in sentencing as set forth
8 at Title 18, United States Code, Section 3553(a).

9 The agreement in this case calls for a sentence of
10 72 months incarceration followed by four years of supervised
11 release. I need -- I'm assuming that each party believes that
12 such a disposition comports with the 3553 factors. If I'm
13 incorrect, let me know. But based upon that assumption, I'll
14 let the attorneys explain why they believe that.

15 Mr. Lester, why don't you go first.

16 MR. LESTER: Yes, Your Honor.

17 THE COURT: And I've read your sentencing memorandum
18 in which you go into some, but please elaborate on that.

19 MR. LESTER: Thank you, Your Honor.

20 This agreement does comport with the 3553 factors
21 for the reasons set forth in the sentencing memorandum,
22 specifically, it takes into account the nature and
23 characteristics of the offense, the history and
24 characteristics of Mr. Brewer personally, which we go into in
25 some length not only in the sentencing memorandum, but which

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1 are described in the presentence report.

2 It provides for the need of the sentence to give him
3 needed training and care, both mental health and drug care,
4 which are described, and it avoids unwarranted sentencing
5 disparities because the agreed sentence is in fact within the
6 advisory guidelines. So, for those reasons, we would suggest
7 to the Court that it fits the 3553 factors.

8 THE COURT: All right. Mr. Poole.

9 MR. POOLE: Judge, I don't have a lot to add. I
10 think that Mr. Lester covered it.

11 THE COURT: Okay. The government believes it
12 satisfies the 3553 factors?

13 MR. POOLE: That's accurate, Judge.

14 THE COURT: In that case, I tend to agree based upon
15 my review of this case and the particular information set
16 forth in the presentence investigation report.

17 Mr. Brewer, is there anything you want to say before
18 I impose sentence?

19 THE DEFENDANT: Your Honor, I do.

20 THE COURT: What's that?

21 THE DEFENDANT: I said, yes, I do.

22 THE COURT: Okay. Go ahead.

23 THE DEFENDANT: Well, really, I just want to
24 apologize to my family and my loved ones for my mistake that I
25 made --

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1 THE COURT: By the way, Mr. Brewer, if you want to
2 turn and face your family while you're saying this, that's
3 perfectly all right with me.

4 THE DEFENDANT: I just want to tell you all I
5 apologize for taking you all through this, and it's --

6 THE COURT REPORTER: Judge, I can't hear him.

7 THE COURT: Mr. Brewer, I tell you what. I'm the
8 one that told you, but the court reporter has got to hear you.
9 Do you mind stepping over just a little bit so she can hear
10 you as you're facing your family?

11 THE DEFENDANT: Yeah.

12 THE COURT: Talk loud, please.

13 THE DEFENDANT: Let me tell you, I apologize for
14 taking you all through this. You've been with me every step
15 of the way. You never gave up on me. I done got my head
16 together and so I'm focused now. I'm just ready to come in,
17 I'm going in the man I am and I'm coming out a better man, so
18 I love you all. Thank you for sticking by my side. Thank you
19 all for being here.

20 THE COURT: Okay. Thank you, Mr. Brewer. All
21 right. Are you ready for me to impose sentence?

22 THE DEFENDANT: (Moves head up and down.)

23 THE COURT: Okay.

24 MR. LESTER: Your Honor, there are, as I noted in
25 the sentencing memorandum, Mr. Brewer did have several

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1 requests that he was asking the Court --

2 THE COURT: Why don't we go over those.

3 MR. LESTER: Yes, sir -- to include in the
4 sentencing order. The first was a recommendation that he be
5 permitted to participate in the RDAP program.

6 THE COURT: I will grant that request.

7 MR. LESTER: The second is that he receive a mental
8 health evaluation.

9 THE COURT: I'll grant that request.

10 MR. LESTER: And the third one, Your Honor, was a
11 recommendation to the Bureau of Prisons that he be housed as
12 close to Chattanooga as possible.

13 THE COURT: I tell you what, here's my problem with
14 that one. I don't mind doing that, but when I -- I don't run
15 the Bureau of Prisons. And so, when I'm recommending these
16 programs and other recommendations, here's what you're asking
17 me to do. Tell the Bureau of Prisons, this, this, this and
18 this, and, by the way, do it here. So, I have a problem with
19 that one, quite honestly. Go ahead, though. I am -- but I
20 will recommend the drug treatment program and mental health
21 evaluation. I'm also going to recommend that he participate
22 in job and vocational training, I think that's important.
23 Okay. What else?

24 MR. LESTER: Your Honor, we're asking for a finding,
25 that the Court order Mr. Brewer's sentence be considered to

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1 start on the day he was indicted in this court, which is
2 October 23rd, 2018, so that he receives appropriate time
3 credit. He was being held in state custody elsewhere on --

4 THE COURT: What if I just say the sentence is to
5 run -- well, I tell you, I'm not so sure that --

6 MR. LESTER: Your Honor, certainly, the Court has
7 the authority, and I would --

8 THE COURT: I mean, I think his sentence should be
9 consecutive to the state charges, if that's what you're
10 saying.

11 MR. LESTER: No, sir.

12 THE COURT: Okay.

13 MR. LESTER: That's certainly not what I'm saying.
14 I'm suggesting under guideline 5G1.3, Section (d) that the
15 Court has the authority to state that his sentence begins on a
16 specific date. And in this case, the date he was indicted, he
17 was in state custody. He was brought here by writ about six
18 weeks later. And he's concerned that he's going to lose
19 credit for those six weeks. And he's asking the Court to
20 specify that his sentence start on the day that he was
21 indicted, so that he doesn't lose credit for those. I'm not
22 asking for this to run concurrent with the Johnson City
23 charge, because the Johnson City charge is not relevant
24 conduct, but the guidelines do indicate that the Court has the
25 authority to specify that a sentence begin on a particular

1 date. And we would suggest that it would be equitable to make
2 sure that he doesn't lose credit for the time between when
3 this Court indicted him and when he was brought in on this --

4 THE COURT: This Court didn't indict him.

5 MR. LESTER: I'm sorry, Your Honor, when the grand
6 jury indicted him. And he was indicted in this court and then
7 brought to this court by writ.

8 THE COURT: What does the government say about that,
9 Mr. Poole? This is -- I'm very concerned if we're going to go
10 there, this, I believe, has the potential to change the
11 landscape in many cases in which federal charges are brought
12 while a defendant is in state custody. And it's almost -- it
13 makes the meeting date of the grand jury an important factor
14 in sentencing. What's the government's position about that?

15 MR. POOLE: We would object, Your Honor, for a
16 couple of reasons, you've kind of talked about one of them,
17 that the indictment date and the arrest date are not the same
18 thing. And were he to receive credit for that six weeks when
19 he's in state custody before he's brought over here, he's also
20 going to get, obviously, credit in the state case for that
21 because that's what he's in custody for. So, that would be in
22 effect running at least part of the sentence concurrent.

23 THE COURT: I think that's the reason I was
24 inquiring as to whether that could be consecutive. And, I
25 mean --

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1 MR. POOLE: I agree you have the power to do that,
2 but I would object to it, Judge. I think that once he comes
3 into federal custody is when he was in federal custody.

4 THE COURT: I am going to reject that, Mr. Lester.
5 I just -- I can't think of a principled reason to make the
6 meeting date of the grand jury a salient factor in sentencing.
7 I just don't see that.

8 MR. LESTER: Yes, sir.

9 THE COURT: What else?

10 MR. LESTER: Factor five, Your Honor, was requesting
11 that the Court waive what would otherwise be the mandatory
12 condition of supervision concerning sexual offender
13 registration and treatment. That has nothing to do with this
14 case. Mr. Brewer understands and the probation office has
15 said that they don't plan to impose that, but since it's a
16 mandatory condition, they did not have the authority to waive
17 it either.

18 THE COURT: Okay. Does the government have any
19 objection to that?

20 MR. POOLE: No objection.

21 THE COURT: Then I will say that will not be a
22 mandatory condition in Mr. Brewer's judgment.

23 MR. LESTER: Thank you, Your Honor. Those were the
24 five conditions that he was asking for.

25 THE COURT: All right. Okay. Based upon that,

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1 then, are we ready to sentence?

2 MR. LESTER: Yes, sir.

3 THE COURT: Okay. The Court has considered the
4 nature and circumstances of the offense, the history and
5 characteristics of the defendant, and the advisory guideline
6 range, as well as the other factors listed in Title 18, United
7 States Code, Section 3553(a).

8 Pursuant to the Sentencing Reform Act of 1984, it's
9 the judgment of the Court on Count 2 of the second superseding
10 indictment that the defendant, Monte Brewer, is hereby
11 committed to the custody of the Bureau of Prisons to be
12 imprisoned for a term of 72 months. The sentence shall run
13 consecutive to any sentence imposed in the defendant's state
14 cases, including Hamilton County Criminal Court cases 303589,
15 300237, 302624, and 303507, and Washington County Criminal
16 Court case 44046C.

17 The Court will recommend that the defendant receive
18 500 hours of substance abuse treatment from the Bureau of
19 Prisons' Institution Residential Drug Abuse Treatment Program.

20 The Court further recommends that the defendant
21 submit to a mental health evaluation while incarcerated and
22 follow all treatment and medication recommendations.

23 Finally, the Court recommends that the defendant
24 participate in a job or vocational training while
25 incarcerated.

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1 Upon release from imprisonment, the defendant shall
2 be placed on supervised release for a term of four years.
3 While on supervised release, the defendant shall not commit
4 another federal, state, or local crime. The defendant must
5 not unlawfully possess and shall refrain from the use of a
6 controlled substance.

7 The defendant must comply with the standard
8 conditions that have been adopted by this Court in Local Rule
9 83.10, and, in particular, the defendant must not own,
10 possess, or have access to a firearm, ammunition, destructive
11 device, or any other dangerous weapon.

12 The defendant shall cooperate with the collection of
13 DNA, as directed.

14 In addition, the defendant shall comply with the
15 following special conditions:

16 Number one, that the defendant shall participate in
17 a program of testing and/or treatment for drug and/or alcohol
18 abuse, as directed by the probation officer, until such time
19 as the defendant is released from the program by the probation
20 officer.

21 Number two, the defendant shall waive all rights to
22 confidentiality regarding substance abuse treatment in order
23 to allow release of information to the supervising United
24 States probation officer and to authorize open communication
25 between the probation officer and the treatment providers.

1 Number three, the defendant shall submit his
2 property, house, residence, vehicles, papers, including
3 computers, as defined at Title 18, United States Code,
4 Section 1030(e)(1), other electronic communications or data
5 storage device or media, or office to a search conducted by a
6 United States probation officer or his or her designee.
7 Failure to submit to a search may be grounds for revocation of
8 release. The defendant shall warn any other occupants that
9 the premises may be subject to searches pursuant to this
10 condition. An officer may conduct a search pursuant to this
11 condition only when a reasonable suspicion exists that the
12 defendant has violated a condition of his supervision and that
13 the areas to be searched contain evidence of this violation.
14 Any search must be conducted at a reasonable time and in a
15 reasonable manner.

16 It's further ordered that the defendant shall pay to
17 the United States a special assessment of \$100, pursuant to
18 Title 18, United States Code, Section 3013, which shall be due
19 immediately.

20 The Court finds that the defendant does not have the
21 ability to pay a fine, and the Court will waive the fine in
22 this case.

23 All documents sealed in this case are now ordered to
24 be unsealed with the exception of the presentence
25 investigation report unless counsel has reasons they should

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1 not be.

2 Does either party have any objection to the sentence
3 just pronounced that have not previously been raised.

4 Mr. Lester?

5 MR. LESTER: No, Your Honor.

6 THE COURT: All right. Mr. Poole?

7 MR. POOLE: No, sir.

8 THE COURT: Mr. Poole, are there counts to be
9 dismissed in this case?

10 MR. POOLE: Yes, sir. Move to dismiss the remaining
11 count, I believe it's Count 7 of the superseding indictment.

12 THE COURT: I'll grant that motion.

13 Now, Mr. Brewer, you do have the legal right to
14 appeal the sentence that I've imposed here this morning. If
15 you wish to do that, you must file what's known as a notice of
16 appeal within 14 days after the entry of the judgment in your
17 case. The judgment is simply a formal, legal document that
18 outlines the sentence that I've imposed here today.

19 There is a fee associated with filing a notice of
20 appeal. If you can't afford to pay that fee, you may file an
21 application for what's known as in forma pauperis, or IFP
22 status which, if granted, will have the affect of reducing or
23 eliminating that fee.

24 Your attorney, Mr. Lester, can help you with both
25 the notice of appeal and the IFP application. If for any

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1 reason Mr. Lester doesn't help you, which I think is unlikely,
2 but if he doesn't, you can contact the Clerk of the Court and
3 the Clerk of the Court will provide you with the necessary
4 documents for both the notice of appeal and the IFP
5 application.

6 Do you understand your appeal rights?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Anything else on behalf of
9 Mr. Brewer this morning?

10 MR. LESTER: No, Your Honor.

11 THE COURT: Anything from the government, Mr. Poole?

12 MR. POOLE: No, sir.

13 THE COURT: Good luck to you, Mr. Brewer.

14 END OF JUDGMENT PROCEEDINGS

15
16 I, Shannan Andrews, do hereby certify that I
17 reported in machine shorthand the proceedings in the
18 above-styled cause held October 21, 2019, and that this
19 transcript is an accurate record of said proceedings.

20
21 s/Shannan Andrews
22 Shannan Andrews
23 Official Court Reporter
24
25

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